



August 24, 2000

Mr. Joseph T. Longoria
Perdue, Brandon, Fielder, Collins & Mott, L.L.P.
Attorneys at Law
2600 Citadel Plaza Drive, Suite 500
Houston, Texas 77008

OR2000-3250

Dear Mr. Longoria:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 138318.

The El Paso Central Appraisal District (the "district") received a request for the following information:

- [1.] Copies of all contracts for legal services for the years of 1998, 1999 and 2000.
- [2.] Copies of all contracts with the Perdue, Brandon, Fielder, Collins and Mott, L.L.P. firm.
- [3.] Copies of all contracts with Mr. Willis Lee Berrier.
- [4.] Copies of the posted agenda for the May, 2000 meeting of the Board of Directors of the [district].
- [5.] Copies of any recordings made during closed meetings or Executive session of the Board of Directors of the [district].
- [6.] Copies of any minutes made during closed meetings or Executive session of the Board of Directors of the [district] May 2000 meetings.
- [7.] Copies of any documents which discuss the employment of Willis Lee Berrier by the [district] or Appraisal Review Board for the year 2000.

[8.] Copies of any document which discusses possible violations of the Texas Open Meetings Act which may have occurred in the May, 2000 [district] Board of Directors Meeting.

You inform this office that the only responsive records held by the district are the posted agenda (item no. 4) and a tape recording of an executive session of the district's board of directors. You advise us that you do not seek to withhold the posted agenda and that it will be released. *See* Gov't Code §§ 552.221, .301(a), .302. You do not raise any exception to the disclosure of the tape recording, and you did not submit that information to this office in connection with your request for this ruling. *See* Open Records Decision No. 495 at 4 (1988) (concluding that Open Meetings Act provisions remove certified agendas and tapes of executive sessions from review by attorney general under the Public Information Act).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Section 552.101 encompasses information that is made confidential by other statutes. Section 551.104 of the Government Code, a provision of the Open Meetings Act, makes the certified agenda or tape recording of a lawfully closed meeting confidential. A certified agenda or tape recording of a closed meeting is available for public inspection and copying only under a court order issued under section 551.104. *See* Gov't Code § 551.104(c); Open Records Decision No. 495 at 4 (1988).² Section 551.146 of the Open Meetings Act makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. Thus, a certified agenda or tape recording of a properly closed executive session of the district's board of directors is confidential under section 552.101 of the Government Code in conjunction with section 551.104 of the Open Meetings Act. *See* Open Records Decision No. 495 (1988). Therefore, the district must not release the responsive tape recording of the executive session of the board of directors.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

¹Unlike other exceptions to disclosure under chapter 552 of the Government Code, this office will raise section 552.101 on behalf of a governmental body. *See* Open Records Decision No. 325 at 1 (1982) (raising statutory predecessor).

²However, the Open Meetings Act does not make confidential records that were discussed or created in a closed meeting, other than a certified agenda or tape recording. *See* Open Records Decision No. 605 (1992).

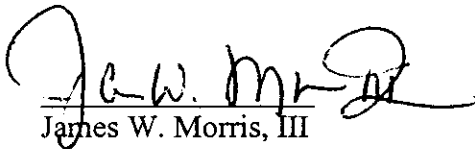
full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 138318

cc: Mr. Richard L. Bischoff
Law Office of Richard L. Bischoff
P.O. Box 5325
El Paso, Texas 79954